DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

LEARY *v.* BRIGGS.

Jan. 16, 1913.

[76 S. E. 907.]

Appeal and Error (§ 518*)—Record—Presentation of Grounds of Review—Stricken Pleas.—Pleas in abatement which have been stricken by the court are not a part of the record unless made such by a bill of exceptions, and hence the court's action in striking them is not reviewable in the absence of such a bill.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 2342-2355; Dec. Dig. § 518.* 5 Va.-W. Va. Enc. Dig. 375.]

Error to Circuit Court, Prince William County.

Action by Edwin M. Briggs against Henry G. Leary. Judgment for plaintiff, and defendant brings error. Writ of error dismissed.

Robt. A. Hutchison, of Manassas, for plaintiff in error.

C. E. Nicol, of Alexander, and *Bryan Gordon,* of Manassas, for defendant in error.

C. C. SMOOT & SONS CO., Inc., *v.* JOHNSON.

Jan. 16, 1913.

[76 S. E. 911.]

1. Appeal and Error (§ 1177*)—Demurrer to Evidence—Compelling Joinder in Demurrer—Effect.—An error by the trial court in compelling the plaintiff to join in defendant's demurrer to the evidence not containing a statement of the evidence would not require a dismissal of the writ of error to review the court's ruling on such demurrer on the ground that it was improvidently awarded, but would require a reversal and a remand for a new trial.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4597-4620; Dec. Dig. § 1177.* 1 Va.-W. Va. Enc. Dig. 632; 4 Va.-W. Va. Enc. Dig. 546; 14 Va.-W. Va. Enc. Dig. 108, 331; 15 Va.-W. Va. Enc. Dig. 76, 284.]

2. Appeal and Error (§ 973*)—Demurrer to Evidence—Compelling Joinder.—On a trial, the evidence was taken in shorthand by the court stenographer. Defendant demurred to the evidence and as-

---

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

signed the grounds of demurrer in writing, but plaintiff refused to join therein because a statement of the evidence was not filed with the demurrer. The court compelled him to join in the demurrer and permitted the evidence to be written out and filed later before the argument on the demurrer. Held, that the court did not abuse its discretion in this respect, especially where counsel stipulated that the demurrer to the evidence might be written up and filed later before the judge in vacation, to have the same effect as if it was then filed.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 3846; Dec. Dig. § 973.* 1 Va.-W. Va. Enc. Dig. 458; 4 Va.-W. Va. Enc. Dig. 532.]

3. Master and Servant (§ 236*)—Liability for Injuries—Contributory Negligence—Selecting Dangerous Way.—Where plaintiff, a boy 15 years old, employed in a tannery, in going to the scouring room, passed between two machines, although he knew that another way was more safe, and remained between the two machines for several minutes, until he was struck and knocked against one of them by a side of leather handled by another employee who was not aware of his presence, he was guilty of contributory negligence precluding a recovery, though he followed another employee whom he had been directed to accompany to the scouring room, since where an employee can discharge his duties in two ways, one safe and the other dangerous, and voluntarily chooses the dangerous way and is injured in consequence, the employer is not liable.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 681, 683, 723-742; Dec. Dig. § 236.* 9 Va.-W. Va. Enc. Dig. 714; 14 Va.-W. Va. Enc. Dig. 696; 15 Va.-W. Va. Enc. Dig. 656.]

4. Master and Servant (§ 121*)—Liability for Injuries—Guarding Machinery.—An employer was not liable for injuries caused by his failure to guard a pulley on a machine, where he had no reasonable ground to apprehend danger of an accident from that source.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 228-231; Dec. Dig. § 121.* 9 Va.-W. Va. Enc. Dig. 689; 14 Va.-W. Va. Enc. Dig. 689; 16 Va.-W. Va. Enc. Dig. 644.]

Error to Circuit Court, Rappahannock County.

Action by Bertram Johnson against C. C. Smoot & Sons Company, Incorporated. Judgment for plaintiff, and defendant brings error. Reversed and remanded.

S. S. P. Patteson and *J. H. Price*, both of Richmond, Va., for plaintiff in error.

C. H. Keyser and *Jas. F. Strother*, both of Washington, Va., for defendant in error.

---

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.